

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/419,716 10/14/99 ZITTEL

D 6,008

IM62/0927

EXAMINER

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ART UNIT	PAPER NUMBER
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1761

DATE MAILED:

09/27/00

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No. 09/419,716	Applicant(s) Zittel, et al.
Examiner Timothy F. Simone	Group Art Unit 1761



Responsive to communication(s) filed on \_\_\_\_\_.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire -0- month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claims

Claim(s) 1-76 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) \_\_\_\_\_ is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims 1-76 are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED OFFICE ACTION**

### ***Election/Restriction***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-40, drawn to a method of heating a food product, classified in class 426, subclass 520.
- II. Claims 41-76, drawn to a blancher for heating a plurality of food products, classified in class 99, subclass 348.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as method/process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the

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method/process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different method/process. (MPEP § 806.05(e)). In this case, the method as claimed can be practiced by another materially different apparatus without the specifics of the Group II apparatus.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, and because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

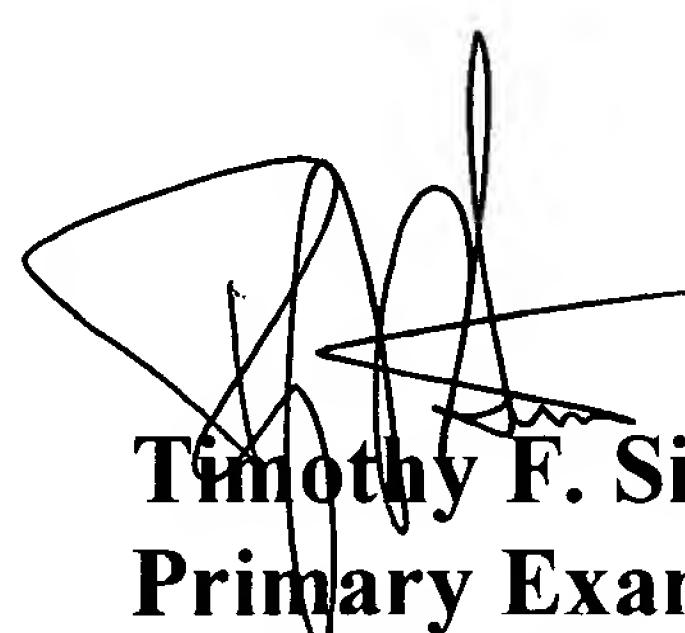
*Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).*

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if

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one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0861.



**Timothy F. Simone  
Primary Examiner  
Group 1760  
Art Unit 1761**